BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

DAWN D. BELL	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,021,884
STATE OF KANSAS	)	
Self-Insured Respondent	)	

ORDER

The State of Kansas appealed the May 24, 2005, Preliminary Decision entered by Administrative Law Judge Robert H. Foerschler.

ISSUES

On February 10, 2005, claimant slipped on icy steps and fell as she was leaving work. In the May 24, 2005, Preliminary Decision, Judge Foerschler granted claimant's request for workers compensation benefits.

The State of Kansas filed this appeal for the Board to address the issue of whether claimant's accident arose out of and in the course of her employment. The State questions whether claimant's accident is compensable under the Workers Compensation Act. The State contends it leased the building where claimant worked and that the landlord was required to maintain the steps where claimant fell.

Claimant, on the other hand, contends the accident is compensable under the Workers Compensation Act under the "going and coming" rule set forth in K.S.A. 2004 Supp. 44-508(f).

The only issue before the Board on this appeal is whether claimant's accident arose out of and in the course of her employment with respondent in light of the going and coming rule.

FINDINGS OF FACT

After reviewing the record compiled to date, the Board finds:

1. On February 10, 2005, Dawn D. Bell slipped and fell on icy steps just outside the north entrance to the building where she worked for the State Department of Social and

Rehabilitation Services. At the time of the accident, Ms. Bell had completed her workday, had exited the building, and was walking to her car. The steps where Ms. Bell fell link a porchlike area that abuts the building's north entrance to the sidewalk that leads to the adjacent parking lot where the State leased parking space and directed Ms. Bell to park.

2. The State of Kansas leased the building where Ms. Bell worked. And the lease agreement states the lessor is responsible for all exterior upkeep. It appears the State of Kansas leases the entire building and there are no other tenants in the building.

CONCLUSIONS OF LAW

The Preliminary Decision should be affirmed.

An injury is compensable under the Workers Compensation Act if it arises out of and in the course of employment.[1] The Act addresses "arising out of and in the course of employment" in the following "going and coming" rule:

> The words "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include injuries to the employee occurring while the employee is on the way to assume the duties of employment or after leaving such duties, the proximate cause of which injury is not the employer's negligence. **An employee shall not be construed as being on the way to assume the duties of employment or having left such duties at a time when the worker is on the premises of the employer** or on the only available route to or from work which is a route involving a special risk or hazard and which is a route not used by the public except in dealings with the employer. . . .[2] (Emphasis added.)

The Workers Compensation Act is to be liberally construed to bring both employers and employees within its provisions affording them the protections of the Act.[3] When construing statutes, legislative intent is to be determined by considering the entire Act. If possible, effect must be given to every part of the Act. And as far as practicable, the different provisions of the Act should be construed to make them consistent, harmonious, and sensible.[4]

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[1] K.S.A. 44-501(a); See *Chapman v. Victory Sand & Stone Co.*, 197 Kan. 377, 382-383, 416 P.2d 754 (1966).

[2] K.S.A. 2004 Supp. 44-508(f).

[3] K.S.A. 44-501(g).

[4] *KPERS v. Reimer & Koger Assocs., Inc.*, 262 Kan. 635, 941 P.2d 1321 (1997).

The State of Kansas denies responsibility on the basis that claimant's accident did not occur on its premises as the landlord was responsible under the terms of the lease for cleaning and maintaining the exterior of the building, including the steps where claimant fell.

Ms. Bell did not fall upon a public sidewalk. Instead, Ms. Bell fell in an area that was part of the premises leased by the State. Although the lessor was contractually bound to maintain the steps where Ms. Bell fell, the State had ultimate control as it could bring legal action against the lessor in the event the lessor failed to properly maintain that area. Accordingly, the Board finds Ms. Bell fell on the State's premises. Therefore, the Board affirms the Judge's finding that Ms. Bell's accident arose out of and in the course of her employment with the State.

Based upon the above, the Board does not need to address whether Ms. Bell's accident occurred "on the only available route to or from work which is a route involving a special risk or hazard and which is a route not used by the public except in dealings with the employer."[5]

WHEREFORE, the Board affirms the May 24, 2005, Preliminary Decision entered by Judge Foerschler.

IT IS SO ORDERED.

Dated this ____ day of July, 2005.

BOARD MEMBER

c: Michael H. Stang, Attorney for Claimant
Marcia L. Yates, Attorney for Respondent
Robert H. Foerschler, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

[5] K.S.A. 2004 Supp. 44-508(f).